

The meeting of the Cape Cod Commission was called to order on Thursday, July 23, 2009 at 3:00 p.m. in the Assembly of Delegates Chambers in Barnstable, MA. Roll was called and a quorum established.

■ EXECUTIVE DIRECTOR'S REPORT

Paul Niedzwiecki said he met with Mark Sylvia regarding the Green Communities Act and said Mr. Sylvia's recommendation was for towns to proceed as individual communities as opposed to a regional approach. Mr. Niedzwiecki said he would encourage individual towns to apply as individual green communities and said there would be an opportunity to talk about a regional approach in the future. Mr. Niedzwiecki said the Commission is moving forward with the Comprehensive Economic Development Strategy (CEDs).

■ MINUTES

The minutes of the May 28, 2009 Commission meeting were reviewed. Roy Richardson moved to approve the minutes. Peter Graham seconded the motion. The motion passed with one abstention.

The minutes of the June 11, 2009 Commission meeting were reviewed. Roy Richardson moved to approve the minutes. Joy Brookshire seconded the motion. The motion passed with one abstention.

Chair John Harris announced a change in the order of agenda items and said the public hearing for the Dalby ANR project will be heard first.

■ DALBY ANR

Roy Richardson read the hearing notice and opened the hearing at 3:10 p.m.

The subcommittee reviewed the minutes of the July 2, 2009 subcommittee meeting. Ernest Virgilio moved to approve the minutes. Roy Richardson seconded the motion. The motion passed with a unanimous vote.

The subcommittee reviewed the minutes of the July 15, 2009 subcommittee meeting. Roy Richardson moved to approve the minutes. Ernest Virgilio seconded the motion. The motion passed with a unanimous vote.

Marianna Sarkisyan, regulatory officer at the Commission, referred to PowerPoint slides and said the property located at 944 Shootflying Hill Road in Centerville, MA consists of a 31.5-acre parcel of land consisting of a single-family residence and accessory structures which includes two sheds, a greenhouse, and a tennis court. She said the remaining portions of the property consist of wooded areas, driveway areas, and wetlands. She said the property has frontage on Wequaquet Lake and contains North Lily Pond and South Lily Pond. Ms. Sarkisyan said the proposed project involves a division of the existing 31.5-acre parcel of land into two lots. She said Lot 1 would consist of an 18.5-acre parcel containing the existing single-family residence and related accessory structures; it would retain frontage on Wequaquet Lake; and would include North Lily Pond, South Lily Pond, and all wetland resources. Lot 2 would consist of a 13-acre undeveloped parcel, there would be no frontage or access to Wequaquet Lake or ponds, and would be 100% upland. Ms. Sarkisyan provided a procedural history for the project and said on February 18, 2009 the Commission received a Hardship Exemption application from the applicant. She said the proposed project qualifies as a DRI under Section 3(c) of the DRI Enabling Regulations as a division of land totaling 30 acres or more in common ownership or control on or after September 30, 1994. She explained the standards applicable to a Hardship Exemption and said the applicant is requesting a hardship exemption as development other than the division of land into two lots is not proposed and conforming to requirements of the RPP, including preparation of technical studies and imposition of corresponding mitigation would create a hardship. Ms. Sarkisyan discussed the subcommittee's findings and conditions in the draft decision in the areas of historic and archaeological resources, natural resources, and water resources. She said the subcommittee approved the Hardship Exemption application with conditions and said the conditions include that the applicant and future successors of Lot 1 and Lot 2 return to the Commission for review at such time there is

any proposed development, as defined by the Act, on either one of the lots and that this condition be enforced by recording it on the deeds to Lot 1 and Lot 2.

Attorney Andrew Singer, representing the applicant, expressed appreciation to Commission staff and the subcommittee. He said the owner's goal has been to divide the parcel into two lots and said the applicant would come back to the Commission for review of any proposed future development. Attorney Singer said he appreciates consideration by the full Commission.

Ernest Virgilio moved to close the hearing and the record. Roy Richardson seconded the motion. The motion passed with a unanimous vote.

Ernest Virgilio moved to approve with conditions the Hardship Exemption application of Alan Dalby for a two-lot division at 944 Shootflying Hill Road in Centerville. Roy Richardson seconded the motion. A vote called on the motion passed with a unanimous vote.

■ HASEOTES ADDITION

Chair John Harris noted that this is a continued hearing from June 10, 2009.

The subcommittee reviewed the minutes of the July 14, 2009 subcommittee meeting. Roger Putnam moved to approve the minutes. Roy Richardson seconded the motion. The motion passed with a unanimous vote.

Kristy Senatori, chief regulatory officer at the Commission, said the project before the Commission is the Haseotes Addition located at 293 Long Beach Road in Centerville, MA. She said the applicant is proposing to construct an addition to her single-family residence, consisting of 1,937 square feet on one floor and includes two bedrooms, a living area and den, a kitchenette, bathroom, mudroom, foyer and ramp to the existing home. She said currently there is a building permit moratorium in effect that was established by the Craigville Beach District of Critical Planning Concern (DCPC) and the applicant is seeking relief from the moratorium and has applied for a Hardship Exemption. Ms. Senatori said in accordance with the DCPC decision, an applicant may apply for a hardship exemption for any development that can demonstrate that suspension of action on a local development permit application during the limited moratorium constitutes a substantial hardship. She explained the standards of review in Section 23 of the Cape Cod Commission Act that allows the Commission to grant an exemption and provided a procedural history for the project. She said at the first public hearing on January 13, 2009, the subcommittee expressed concern with the size of the addition and after several iterations of the plans, the applicant submitted revised plans with a significantly smaller addition. She said on June 15 and June 25, 2009 the subcommittee deliberated at length on the revised plans and standards of review for a hardship exemption and at the June 25th meeting the subcommittee voted two in favor and one opposed to approve the Hardship Exemption application with conditions. She said at the July 14, 2009 subcommittee meeting the committee reviewed the draft decision and voted unanimously to forward the decision to the full Commission. Ms. Senatori said the subcommittee found that Mrs. Haseotes met her burden of showing a hardship exists. She said they found that both a financial and physical hardship exists. She said the subcommittee found that her physical condition prevents her from ambulating through her existing home that has several different levels of living space and sets of stairs within it. She said the subcommittee found that Mrs. Haseotes currently uses a walker and will likely require a wheelchair soon. She said the subcommittee found that Mrs. Haseotes has an immediate need for living space on one floor and needs a live-in caregiver and the two bedrooms and living space in the addition would accommodate her needs. She said the subcommittee also found, as presented by the applicant's engineer, that renovation of the existing home to accommodate the applicant's disability is not possible. She said the subcommittee found that accommodating the applicant's handicap is the minimum relief necessary. Ms. Senatori explained the findings and conditions in the draft decision regarding natural resources, water resources and community character. She said the applicant has worked with the Town of Barnstable and has agreed to deed restrictions in perpetuity upon the property and said they have been incorporated as a condition in the decision.

She referred to a revised deed restriction that was distributed to Commission members and said the changes include a technical date correction and a clarification that the property shall be used for single-family residential use only and that accessory uses, including accessory apartments and home occupation uses are prohibited. She said, in addition, the applicant has agreed verbally to include in each restriction language allowing the Commission the ability to unilaterally re-record the restrictions with the Barnstable County Registry District of Land Court prior to the 30-year expiration of the restrictions. In closing, Ms. Senatori said the subcommittee found that the applicant met her burden of proving a hardship exists by virtue of the DCPC moratorium and that the proposed addition does not present a substantial detriment to the public good. She said the subcommittee also found that the relief granted relates directly to the nature of the identified hardship and is the minimum relief necessary to address the hardship.

Chair John Harris questioned whether it was normal practice to accept a verbal agreement regarding a modification to a deed restriction.

Kristy Senatori said she has spoken to the applicant and is comfortable with that.

Jessica Wielgus, Commission counsel, explained that the applicant's testimony regarding this change will become part of the record.

Attorney Barry Weiner, with the law firm Ruberto, Israel & Weiner representing the applicant together with Eliza Cox of Nutter, McClennen & Fish, said there is a provision in the draft decision with language that allows the Commission to accept the modification to the deed restriction. He said it gives the Commission the right to re-record the deed restriction and said the Commission has the ultimate vote to accept the conditions of the decision. Attorney Weiner said the project started before the designation of the DCPC and the applicant has incurred \$75,000 in costs and he believes that satisfies the burden of a financial hardship. He said there is also a substantial physical hardship on the part of Mrs. Haseotes. He said, at the start, Mr. Haseotes had a physical hardship and was wheelchair bound. He said Mr. Haseotes has since passed away and initially that was the main thrust but Mrs. Haseotes also has a physical hardship. He said during a subcommittee meeting Joy Brookshire requested a medical history be provided for Mrs. Haseotes. He said Dr. Eric Weber, a physician in Hyannis, was approached and said he would be happy to write a letter laying out her physical problems and how it relates to her living in the house. Attorney Weiner said the letter correctly and thoroughly addresses the situation. He said there are two significant reasons showing a hardship based on Commission standards. He said they came to an agreement during a subcommittee meeting to downsize the plans from 4,200 square feet of space to 1,937 square feet and said the applicant plans to replace the septic system with a substantial upgrade that will reduce nitrogen load to groundwater and said that would be achieved through use of a High Strength Fast denitrifying system. Attorney Weiner said he appreciates the Commission's consideration.

Joy Brookshire said the kitchen that is being built is a small kitchenette, not a full size kitchen, and it will be handicap accessible. She said Commission staff has permission to inspect the home during construction to ensure conditions in the Commission's decision are being met.

Roy Richardson moved to close the hearing and the record. Elizabeth Taylor seconded the motion. The motion passed with a unanimous vote.

Joy Brookshire moved to approve with conditions the Hardship Exemption application for Joyce Haseotes. Roy Richardson seconded the motion.

Roger Putnam, a member of the subcommittee, said they voted two in favor and one opposed. He said he voted against the request. He said he believes it fails to qualify as a hardship and said it goes against the DCPC. He said the hardship application was based on Mr. Byron Haseotes who has since passed away and said now the

Commission is being asked to consider a hardship for Joyce Haseotes who will need a wheelchair in the future. He said regarding the \$75,000 the applicant knew the risk and said a financial hardship was created by the applicant's choice. He said a physical hardship is for something in the future. He said the DCPC identifies the area as having historic and archaeological resources. He said the Town of Barnstable has asked for a moratorium while they develop implementing regulations. He said the purpose of the DCPC is to give the town the time to complete the implementing regulations and he would ask that the Commission respect that until the implementing regulations are completed. Mr. Putnam said he would urge voting against the recommendation of the subcommittee and said the Commission should respect any town requesting a DCPC.

Joy Brookshire said they were a subcommittee of three members. She said it was a difficult decision and emotional for the applicant to come before the Commission. She said the subcommittee reviewed information submitted by Commission staff, town planners, the applicant's architect, the applicant's engineer and Dr. Weber. She said she voted yes to a physical and financial hardship—based on the evidence presented she voted to approve the Hardship Exemption request. Ms. Brookshire said the applicant reduced their plans from a 4,200 square foot to a 1,937 square foot addition. She said Jo Anne Miller Buntich, from the Barnstable Growth Management Department, spoke at the hearing and said the major concern by the town was that the roof was still too high. She said the architect explained the reason for the height over the first floor was to allow working space for duct work and mechanical and electrical equipment over the first floor. She said originally the addition was planned for two floors and now it has been reduced to one floor and will be handicap accessible. She said the subcommittee was very aware of why the DCPC was voted in place. She said she felt she could vote in good conscience to approve the hardship request and said she believes there is both a financial and physical hardship.

Roy Richardson said he was also on the subcommittee and was also a member of the civic association for the DCPC. He said there is a provision for a hardship exemption in the process and said individuals can apply for a hardship. He said he would normally say wait until the implementing regulations are completed but he does believe there is a financial hardship. He said Mrs. Haseotes has a physical hardship and the letter from Dr. Weber states clearly that it's an immediate need. Mr. Richardson said he believes they followed the provisions of the DCPC and said he would speak in favor of the hardship request.

Frank Hogan referred to GF9 in the draft decision and questioned a \$75,000 economic finding being recorded at the Registry of Deeds. He said he is not sure it is a hardship. He also referred to GF13 and said he is not sure all handicap needs are necessary.

Elizabeth Taylor asked Jessica Wielgus, Commission counsel, if the Commission has all the deed restrictions.

Jessica Wielgus said yes. She said GC5 outlines the deed restrictions.

Elizabeth Taylor said it's a major plus to have the oil tank on the property removed and the septic system replaced with a denitrifying system. She said it's a major improvement to the site.

Sheila Lyons inquired about the status of the DCPC and the feelings of Jo Anne Miller Buntich.

Joy Brookshire said the DCPC timeline ends on September 10, 2009. She said because the applicant was working with Commission staff Ms. Buntich felt better about the project and the only concern was with the roof height. Ms. Brookshire said the applicant's engineer has said the height is necessary as it provides a workable space for mechanical equipment that is enclosed in the attic space.

Jessica Wielgus said during review of the deed restrictions, Commission staff requested the town be included in that review and she said the town was pleased with the deed restrictions.

Paul Niedzwiecki said the DCPC ends on September 10th and the town is taking up the implementing regulations at the August 6th Town Meeting.

Joy Brookshire asked Ms. Wielgus to read aloud the deed restrictions.

Jessica Wielgus recited the deed restrictions to the full Commission. She said she met with Jo Anne Miller Buntich and said she requested that specific language be in the deed restrictions.

Michael Blanton asked the applicant's counsel if he had any concerns with the deed restrictions.

Attorney Weiner said he did not have any concerns.

A vote was called on the motion to approve the Hardship Exemption request for Joyce Haseotes. The motion passed with 6 votes in favor and 4 votes opposed.

A motion was made to adjourn at 4:15 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

Elizabeth Taylor, Secretary